

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 27TH SEPTEMBER 2006 / 5TH ASWINA 1928

OP.No. 39862 of 2002(U)

PETITIONER:

M/S.TUNES ELECTRONICS, GRAND BAZAR,
OYITTY ROAD, CALICUT - 1., REPRESENTED BY
MANAGING PARTNER E.P.HARRIS.

BY ADV. SRI.M.RAMESH CHANDER
SRI.P.RAGHUNATH

RESPONDENTS:

1. INTELLIGENCE OFFICER, (I.B),
OFFICE OF THE DEPUTY COMMISSIONER (INT.),KOZHIKODE
2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES,
KOZHIKODE.
3. THE COMMISSIONER OF COMMERCIAL TAXES,
TRIVANDRUM.
4. MANAGER, STATE BANK OF TRAVANCORE,
PALAYAM BRANCH, CALICUT.
5. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, TRIVANDRUM.

R1 TO R3 & R5 BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 27/09/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP NOS. 66766 OF 2002 AND 9382 OF 2003 IN OP 39862 OF 2002

DISMISSED

27.9.2006

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF NOTICE PROPOSING TO IMPOSE PENALTY FOR 1996-97 FROM R1 DATED 9.3.1999

EXT.P2 TRUE COPY OF REPLY TO EXT.P1 DATED 4.11.1999

EXT.P3 TRUE COPY OF ORDER IMPOSING PENALTY FOR 1996-97 DATED 22.12.1999

EXT.P4 TRUE COPY OF PENALTY NOTICE FOR 1997-98 DATED 9.3.1999

EXT.P5 TRUE COPY OF REPLY TO EXT.P4 DATED 4.11.1999

EXT.P6 TRUE COPY OF ORDER IMPOSING PENALTY FOR 1997-98 DATED 22.12.1999

EXT.P7 ORDER OF THE SECOND RESPONDENT IN REVISION PETITIONS AGAINST EXT.P3 AND P6 ORDERS DATED 27.10.2000

EXT.P8 TRUE COPY OF BANK GUARANTEE OFFERED DATED 15.7.2000

EXT.P9 TRUE COPY OF THE ORDER OF THE THIRD RESPONDENT IN REVISION PETITIONS AGAINST EXT.P3 AND P6 ORDERS AND EXT.P7 ORDER DATED 26.10.2002

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P.NO. 39862 OF 2002

Dated this the 27th day of September, 2006

JUDGMENT

Petitioner is challenging Ext.P9 order issued by the Commissioner of Commercial Taxes, confirming penalty levied under Section 45A for the assessment years 1996-97 and 1997-98. I heard counsel appearing for the petitioner and Government Pleader and I have also gone through Ext.P9 . It is seen that petitioner, a dealer in electronic goods, made unaccounted purchases which led to penalty. The Intelligence Department collected particulars of goods purchased by the petitioner from outside the State. However, when accounts are verified petitioner has not accounted any such purchases. The purchases were verified with reference to lorry receipts and it was seen that petitioner has received goods by discharging lorry receipts with signature and office seal. Further more, the Department got confirmation letters from the transporter, namely, Saurashtra Roadways who have clearly stated that goods were transported

and delivered to the petitioner. Therefore all the three authorities concurrently found that the purchases were made by the petitioner and that too based on clear-cut evidence. It is seen from the penalty order that complete details were furnished to the petitioner and petitioner did not choose to adduce any evidence to disprove the case. Even though counsel for the petitioner contended that petitioner was not given an opportunity to cross-examine the transporter who issued confirmation letter, I do not think petitioner is entitled to any such opportunity because lorry receipts with petitioner's signature and office seal are sufficient evidence for concluding transactions as pertaining to the petitioner. More over transporter cannot be expected to give false statement to the department after confirming that they transported the goods, because the same will lead to complications for them. In the circumstances, there is no scope for interference with the impugned order.

O.P. is therefore dismissed. However, since O.P. is pending from 2002 onwards, I waive forty per cent of the interest payable under Section 23(3) of the Act on the penalty amount, provided petitioner clears the arrears of penalty with sixty per cent interest

thereon within one month from the date of receipt of a copy of this judgment. If petitioner commits default in payment as above, reduction granted will stand cancelled and respondents will be free to proceed for recovery of the entire arrears due with full interest.

(C.N.RAMACHANDRAN NAIR)
Judge

